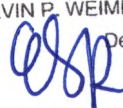


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U.S.D.C. Atlanta

JUL 10 2025

KEVIN P. WEIMER, Clerk
By:  Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

Civil Action No. 1:24-cv-03583-VMC

DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,
Defendants,

and

JACQUELINE BURKHALTER, et al.,
Relief Defendants.

AFFIDAVIT OF MARK PAUL HAYE IN SUPPORT OF MOTION TO DISQUALIFY RECEIVER'S
COUNSEL

I, Mark Paul Haye, declare under penalty of perjury under the laws of the United States that the following is true and correct:

1. I am the Trustee of the Mark P. Haye Living Trust and a party in interest in this matter. I am not an attorney and am representing myself pro se.

2. I submit this Affidavit in support of my Motion to Disqualify Mr. Russell Landy, counsel for the court-appointed Receiver, for misconduct and repeated failure to follow proper legal procedures and Court orders.

3. On May 21, 2025, this Court issued an Order directing that “the Receiver’s brief must be filed no later than June 4, 2025... and must be served on Mr. Haye. Mr. Haye and any interested parties may file a responsive brief... within 14 days of being served.” (See Exhibit A.)

4. I have not been properly served with the Receiver’s June 4, 2025 brief. Mr. Landy instead sent it via email on June 2, 2025, with no certificate of service filed with the Court. I never received formal service as required by Federal Rule of Civil Procedure 5(b) or the Court’s express Order.

5. Mr. Landy claims I was previously “served” by way of a process server delivering materials to a Melissa Sontheimer in April 2025, who does not reside with me, is not authorized to accept service on my behalf, and has no legal standing in this matter.

6. Mr. Landy has repeatedly used misleading and aggressive tactics, including threatening language, accusations of “dilatory conduct,” and implying that I waived rights by merely replying to emails sent to me without proper service. (See Exhibit B: email correspondence.)

7. I am simply trying to protect my home and respond as permitted under the law. Mr. Landy’s conduct has caused severe confusion, delay, emotional stress and prejudice to my rights, especially as I am proceeding pro se and without legal counsel.

8. I believe this behavior is part of a broader pattern of deception and unfairness, and that Mr. Landy has shown himself unfit to continue in this role.

9. I respectfully request that the Court disqualify Mr. Landy from further representation in this case, or in the alternative, enforce strict adherence to proper procedures and ensure that I am granted a fair and honest opportunity to be heard.

10. If proper service had been made in accordance with the Court's May 21, 2025 Order, I would have promptly filed a response within the permitted 14 days. I request the Court vacate or hold in abeyance any action based on that improper service and permit me time to file my responsive brief.

11. This case is under significant public scrutiny, and many people are watching to see whether the process is handled fairly and transparently. That makes it even more important that all participants—including court-appointed officers—adhere strictly to the law and ethical standards.

Executed this 7th day of July, 2025.



/s/ Mark Paul Haye

Mark Paul Haye

Trustee, Mark P. Haye Living Trust

[7278047220](tel:7278047220)

Markhay31@yahoo.com

100 1st Ave n., 203, St. Petersburg, Florida, 33701

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,

Defendants,

and

JACQUELINE BURKHALTER,
THE BURKHALTER RANCH
CORPORATION, DRIVE
PROPERTIES, LLC, DRIVE
GULFPORT PROPERTIES LLC,
and TBR SUPPLY HOUSE, INC.,

Relief Defendants.

Civil Action No.
1:24-cv-03583-VMC

11
Exhibit A

ORDER

Before the Court is the Receiver's Motion for Turnover of and Imposition of Constructive Trust on Real Property Traceable to Drive Planning, LLC (Doc. 98). The Receiver is directed to file a supplemental brief addressing the following questions: (1) Under applicable law, can the Receiver enforce a constructive trust in favor of investors and against transferees of traceable investor funds based

solely on harm to investors rather than harm to the Receivership Defendant?
See Isaiah v. JPMorgan Chase Bank, 960 F.3d 1296, 1306 (11th Cir. 2020)
("Although a receivership is typically created to protect the rights of creditors,
the receiver is not the class representative for creditors and cannot pursue claims

solely on harm to investors rather than harm to the Receivership Defendant? See *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020) (“Although a receivership is typically created to protect the rights of creditors, the receiver is not the class representative for creditors and cannot pursue claims owned directly by the creditors.”); accord *Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1310 (11th Cir. 2024). (2) In the alternative, can the Receiver’s request to enforce a constructive trust against Mark Haye, as trustee of the Mark Haye Living Trust, be justified based on unjust enrichment of Mr. Haye at the expense of the Receivership Defendant? If so, does the Court need to receive evidence on the fair market value of the unsecured Promissory Note?

The Receiver’s brief must be filed no later than June 4, 2025, must be no more than 10 pages in length, and must be served on Mr. Haye. Mr. Haye and any interested parties may file a responsive brief, no more than 10 pages in length, within 14 days of being served with the Receiver’s brief.

SO ORDERED this 21st day of May, 2025.



Victoria Marie Calvert
United States District Judge

RETURN OF SERVICE

State of Georgia

County of

Northern District Court

Case Number: 1:24-CV-03583-VMC

Plaintiff:
UNITED STATES SECURITIES AND EXCHANGE COMMISSIONS

vs.

Defendant:
DRIVE PLANNING, LLC AND RUSSELL TODD BURKHALTER



DLE2025017934

For:
Russell Landy
DAMIAN & VALORI LLP
1000 Brickell Avenue
Suite 1020
Miami, FL 33131

Received by BRETT POKORNY on the 1st day of April, 2025 at 9:47 am to be served on Mark Hays, 100 1st Ave N, #203, St. Petersburg, FL 33701.

I, BRETT POKORNY, do hereby affirm that on the 2nd day of April, 2025 at 9:53 am, I:

SUBSTITUTE served by delivering a true copy of the Receiver's Motion for Turnover of and imposition of Constructive Trust, Exhibit A. with the date and hour of service endorsed thereon by me, to: **Melissa Sontheimer** as Co resident at the address of: **100 1st Ave N, #203, St. Petersburg, FL 33701**, the within named person's usual place of Abode, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

Additional information pertaining to this Service:

4/1/2025 2:13 pm Attempted service at 100 1st Ave N #203, St. Petersburg, FL 33701, No answer at the front door, dogs barking inside.

Description of Person Served: Age: 35, Sex: F, Race/Skin Color: Caucasian, Height: 5'7", Weight: 150, Hair: Light Brown, Glasses: N

I certify that I am over the age of 18, I have no interest in the above action, and I am authorized to serve process in the jurisdiction where service was effectuated. I am in good standing in the jurisdiction in which the process was served. I affirm all facts stated are true to the best of my knowledge.

BRETT POKORNY
Process Server APS 59364

DLE Process Servers Inc.
936 SW 1st Avenue, #261
Miami, FL 33130
(786) 220-9705

Our Job Serial Number: DLE-2025017934

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DELIVERED	04/02/2025 09:53 AM
SERVER	BP
LICENSE	Process Server APS 59364

Dear Russell,

I am writing in response to your recent email and to clarify my position regarding the issue of proper service under Judge Calvert's May 21, 2025 Order.

The Court's Order clearly stated that your brief "must be served on Mr. Haye," and that I would have "14 days of being served" to file my response. An email does not constitute proper service under the Federal Rules of Civil Procedure—especially when the Court expressly ordered formal service. Additionally, I have not seen a certification of service filed with the Court confirming how and when service was completed. To date, I have not been properly served with the June 4 brief in accordance with the Court's instructions or Rule 5(b).

In your recent communication, you mentioned providing something to Melissa Sontheimer in April—but the Court's Order requiring service was not issued until May 21, 2025, a full month after that. Furthermore, Melissa Sontheimer does not reside with me and is not someone legally authorized to accept service on my behalf. Any document given to her prior to the Court's Order—regardless of its content—cannot and does not satisfy the Court's directive that I be personally served with the June 4 brief.

While I may have acknowledged an email from you, that was done as a courtesy—not a waiver of my right to proper service. I have not had a fair opportunity to review or respond to your brief, and I am simply asking that we all follow the rules and the process the Court has clearly laid out.

This is not the first time I've felt that proper procedures are being disregarded, and it's extremely frustrating—particularly given that this involves my home. I am not a lawyer, but I am making every effort to participate in this process in good faith. Please provide the specific legal authority that allows you to treat email as sufficient service under these circumstances when the Court clearly ordered otherwise.

What's even more frustrating is that negotiating a mortgage or reaching a resolution should be a straightforward matter. But for reasons I don't understand, you continue to make this process far more difficult than it needs to be. Instead of working toward a reasonable solution, it feels like you are deliberately creating unnecessary obstacles, further delaying progress and escalating costs to the estate.

If a mistake was made in service, that's not a problem—just correct it. Properly serve me with the Receiver's brief as ordered, file a certification of service with the Court, and allow my 14-day response period to begin from that date. I also ask that you notify the Court and request that the order be vacated or held in abeyance until this is corrected.

I do not want to go to outside entities to address what appears to be a pattern of evasive and dishonest conduct. I'm asking you directly and respectfully—please do the right thing. Let's follow the law, respect the Court's orders, and ensure both parties have a fair chance to be heard.

Thank you sir.

Published Author - www.markhaye.com

As always,

Mark Haye, MBA
21st Century Financial Partners
Corporate Vice President
Top of the Table - Million Dollar Round Table
NAIFA Top 4 advisor under 40
Registered Representative
Financial Planning - Life Insurance, disability, long term care, retirement and estate planning
[6160 Central Ave N., Suite 200, Saint Petersburg, FL 33707](mailto:M 7278047220)
M 7278047220
[F 1\(727\) 313-9118](tel:17273139118)

From: Russell Landy <rlandy@dvllp.com>

Sent: Tuesday, July 1, 2025 6:29 PM

To: Mark Haye <mhaye@xxicenturyfin.com>

Cc: Jeannette Serna <jserna@dvllp.com>; Kenneth Dante Murena <kmurena@dvllp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: RE: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hello Mark,

You **were** served the Receiver's Motion for Turnover of and Imposition of Constructive Trust by process server. Attached is the sworn affidavit of service. **Thereafter, email service is appropriate.**

You were provided a copy of the Court's 5/22/25 order (DE 127) by me personally (see attached), and the Clerk of Court certified that it was mailed to you by the Clerk.

As I mentioned earlier today, you were served with a copy of the Receiver's brief on 6/2 (I have attached it again here for completeness). You thanked me for sending it to you (see attached).

Throughout this process you were on notice of the Receiver's motion, and fully participated in the proceedings, and responded to briefing papers served upon you by email. **Also, your due process arguments were rejected by the Court.**

Your factually and legally unsupported arguments, and dilatory behavior, are causing further harm to the estate, and if they continue, the Receiver will seek appropriate relief.

Russell

Russell Landy
Partner

rlandy@dvlip.com
Office: 305-371-3960
Fax: 305-371-3965

1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
<https://www.dvcattorneys.com/>



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From: Mark Haye <mhaye@xxicenturyfin.com>
Sent: Tuesday, July 1, 2025 5:48 PM

To: Russell Landy <rlandy@dvllp.com>

Cc: Jeannette Serna <jserna@dvllp.com>; Kenneth Dante Murena <kmurena@dvllp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: Re: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hi again,

Thank you for your recent email. To clarify, service of legal process — particularly in federal court — must comply with **Federal Rule of Civil Procedure 4**, which outlines the specific and formal procedures for serving individuals. **Email is not an acceptable method of service** for initiating motions or proceedings, **unless expressly authorized by the Court in writing**.

As an attorney and court-appointed officer, I'm sure you're well aware that procedural due process is fundamental. Simply sending documents via email does **not** constitute valid or lawful service under the Federal Rules or applicable state rules. To date, I have not been served with the Receiver's Motion for Turnover and Constructive Trust (Doc. 98) or related filings in accordance with the law.

I raise this not to be adversarial, but to preserve my rights and ensure that all proceedings are handled correctly and with respect for constitutional due process. I reserve all rights accordingly.

Please let me know when I will be properly served so I have the opportunity to respond in a timely manner. Thank you!

Published Author - www.markhaye.com

As always,

Mark Haye, MBA
21st Century Financial Partners
Corporate Vice President
Top of the Table - Million Dollar Round Table
NAIFA Top 4 advisor under 40
Registered Representative
Financial Planning - Life Insurance, disability, long term care, retirement and estate planning
[6160 Central Ave N., Suite 200, Saint Petersburg, FL 33707](#)
M [7278047220](#)
F [1\(727\) 313-9118](#)

From: Russell Landy <rlandy@dvlp.com>

Sent: Tuesday, July 1, 2025 5:01 PM

To: Mark Haye <mhayexxcenturyfin.com>

Cc: Jeannette Serna <jserna@dvlp.com>; Kenneth Dante Murena <kmurena@dvlp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: RE: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hi Mark,

Attached is the email where you were served with a copy of the brief requested by the Judge in her 5/21 order.

Russell

Russell Landy
Partner

rlandy@dvlp.com

Office: 305-371-3960

Fax: 305-371-3965

1000 Brickell Avenue, Suite 1020

Miami, Florida 33131

<https://www.dvcattorneys.com/>



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From: Mark Haye <mhayexxcenturyfin.com>

Sent: Tuesday, July 1, 2025 4:51 PM

To: Russell Landy <rlandy@dvlp.com>

Cc: Jeannette Serna <jserna@dvlp.com>; Kenneth Dante Murena <kmurena@dvlp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: Re: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hi,

Attached is the letter from the judge dated May 21st. You are supposed to serve me per her orders (last paragraph). Then I can respond 14 days once I am served. When can I expect to be served so I can provide my response within the 14 days? Thank you!

Published Author - www.markhaye.com

As always,

Mark Haye, MBA
21st Century Financial Partners
Corporate Vice President
Top of the Table - Million Dollar Round Table
NAIFA Top 4 advisor under 40
Registered Representative
Financial Planning - Life Insurance, disability, long term care, retirement and estate planning
[6160 Central Ave N., Suite 200, Saint Petersburg, FL 33707](#)
M [7278047220](tel:7278047220)
F [1 \(727\) 313-9118](tel:17273139118)

From: Russell Landy <rlandy@dvllp.com>

Sent: Tuesday, July 1, 2025 4:00 PM

To: Mark Haye <mhay@xxicenturyfin.com>

Cc: Jeannette Serna <jserna@dvllp.com>; Kenneth Dante Murena <kmurena@dvllp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: RE: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hello Mark,

I do not understand your message.

Attached is the draft deed required to be executed by the Court's order along with a return FedEx label for your convenience. Please let us know if this is sufficient, or if you would like us to deliver you a physical copy of the draft deed.

Please send a signed and notarized copy by email as well as dropping the original into a Fedex with the attached label. If you need help accessing a notary, please let us know.

Russell

Russell Landy
Partner

rlandy@dvllp.com
Office: 305-371-3960
Fax: 305-371-3965

1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
<https://www.dvcattorneys.com/>





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From: Mark Haye <mhay@xxicenturyfin.com>

Sent: Tuesday, July 1, 2025 4:28 AM

To: Russell Landy <rlandy@dvllp.com>

Cc: Jeannette Serna <jserna@dvllp.com>; Kenneth Dante Murena <kmurena@dvllp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: Re: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hi,

I have been waiting for you to serve me per the judges order so I can respond. When will I be served please?

Published Author - www.markhay.com

As always,

Mark Haye, MBA
21st Century Financial Partners
Corporate Vice President
Top of the Table - Million Dollar Round Table
NAIFA Top 4 advisor under 40
Registered Representative
Financial Planning - Life Insurance, disability, long term care, retirement and estate planning
[6160 Central Ave N., Suite 200, Saint Petersburg, FL 33707](mailto:M 7278047220)
M 7278047220
[F 1 \(727\) 313-9118](tel:17273139118)

From: Russell Landy <rlandy@dvllp.com>

Sent: Monday, June 30, 2025 3:37 PM

To: Mark Haye <mhay@xxicenturyfin.com>

Cc: Jeannette Serna <jserna@dvllp.com>; Kenneth Dante Murena <kmurena@dvllp.com>; Adriana Pavon <apavon@dvcattorneys.com>

Subject: FW: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

Hello Mark,

Attached is the Court's order on our motion. Please confirm receipt.

Per the Court's Order, please let me know if you would like us to email you the draft form quitclaim deed along with a return FedEx Label, or if you would like us to deliver you a physical copy of the draft deed.

Russell

Russell Landy
Partner

rlandy@dvlip.com
Office: 305-371-3960
Fax: 305-371-3965

1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
<https://www.dvcattorneys.com/>



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From: ganddb_efile_notice@gand.uscourts.gov <ganddb_efile_notice@gand.uscourts.gov>

Sent: Monday, June 30, 2025 2:41 PM

To: CourtMail@gand.uscourts.gov

Subject: Activity in Case 1:24-cv-03583-VMC United States Securities and Exchange Commission v. Drive Planning, LLC et al Order on Motion for Miscellaneous Relief

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U.S. District Court

Northern District of Georgia

LET BY COURT FIND OTHER
States Securities and Exchange
Commission v. Drive Planning,
LLC et al

8months,SUBMDJ,TRO,VMCLC1

U.S. District Court

Northern District of Georgia

Notice of Electronic Filing

The following transaction was entered on 7/7/2025 at 1:42 PM EDT and filed on 7/7/2025

Case Name: United States Securities and Exchange Commission v. Drive Planning, LLC et al

Case Number: 1:24-cv-03583-VMC

Filer:

Document Number: No document attached

Docket Text:

This matter is before the Court with respect to the Receiver's [98] Motion for Turnover against Mark Haye. On May 21, 2025, the Court entered an [124] Order directing supplemental briefing. That Order provided, among other things, that "The Receiver's brief... must be served on Mr. Haye." (Doc. [124] at 2). The Receiver filed his [129] Supplemental Brief on June 2, 2025. The Court later entered an [152] Opinion and Order on June 30, 2025 granting the [98] Motion for Turnover. Mr. Haye contacted chambers on July 7, 2025 stating that he had not been served with a copy of the [129] Supplemental Brief. Upon review of the Brief's certificate of service, it does not appear that the Brief was served on Mr. Haye. (Doc. [129] at 11). It is therefore ORDERED that the Receiver is directed to SHOW CAUSE in writing by July 11, 2025 why the Court's [152] Opinion and Order should not be set aside. It is FURTHER ORDERED that under Fed. R. Civ. P. 62(c)(1) the Court's [152] Opinion and Order is STAYED until further Order of the Court. Entered by Judge Victoria M. Calvert on 7/7/2025. (ntj)

1:24-cv-03583-VMC Notice has been electronically mailed to:

MR. MARK P. HAYE
100 1ST AVE. N.
UNIT # 203
SAINT PETERSBURG, FL. 33701



UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
2211 UNITED STATES COURTHOUSE
75 TED TURNER DRIVE S.W.
ATLANTA, GEORGIA, 30303

civil Action No#
1:24-cv-03583-VMC

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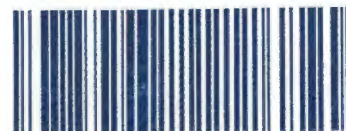
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